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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 371

OREST PANZA et al., Petitioners

v.

ARMCO STEEL CORPORATION, Respondent

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Third Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION

DAVID B. BUERGER
JOHN G. BUCHANAN, JR.
LOUIS EMANUEL
Attorneys for Respondent

1800 Oliver Building
Pittsburgh 22, Pennsylvania

SMITH BROS. CO., INC., LAW PRINTERS, 434-438 BLVD. OF ALLIES, PITTSBURGH 19, PA.

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QUESTIONS PRESENTED

1. A labor union, acting on behalf of its members, sued an employer for damages from an alleged breach of a collective bargaining agreement. The action was dismissed with prejudice. May individual employees, acting on behalf of the union members, thereafter sue the employer for damages from the same alleged breach of the same agreement?

2. An international union, the exclusive collective bargaining agent, agreed to arbitration proceedings which resulted in improving the seniority of some of its

members and adversely affecting the seniority of others. Did the international union exceed its authority?

3. A collective bargaining agreement provided that a complaint not settled should become a grievance, and that any grievance not settled should be arbitrated. The union and the employer agreed to arbitrate a grievance as to whether employees had a right to be transferred to another plant. The arbitrator held that the employees had no such right. May individual employees, acting on behalf of the union members, thereafter sue the employer for damages from the refusal to transfer employees?

STATEMENT OF THE CASE

On December 29, 1960, an action was brought against Armco Steel Corporation in the Court of Common Pleas of Allegheny County, Pennsylvania (81a). The plaintiffs were the United Steelworkers of America and its local unions Nos. 1244 and 2592. The complaint in this first action alleged that the United Steelworkers of America was the exclusive collective bargaining representative, certified by the National Labor Relations Board, for Armco's production, maintenance, and office workers at its plant in Etna, Pennsylvania (82a). The complaint alleged that Armco intended to close its Etna plant and terminate the employees represented by the plaintiffs (85a-86a). The complaint referred to paragraphs in the collective bargaining agreement between United Steelworkers and Armco and in a "seniority supplement" thereto which provided that problems arising out of the transfer of employees from discontinued plants to new plants were matters for which adjust-

ment should be sought between local plant management and local grievance committees (85a).

Then the complaint in the first action alleged that Armco, in breach of the paragraphs in the collective bargaining agreement and the seniority supplement, refused to transfer to Ambridge, Pennsylvania, the Etna employees represented by the plaintiffs, and that these employees had the right to be transferred to the same or similar jobs in Ambridge. The complaint asked that Armco be enjoined from terminating the employees at Etna, that it be required to transfer the Etna employees to Ambridge, and that it be ordered to pay compensatory and punitive damages (89a-90a).

On January 6, 1961, Armco removed this first action to the District Court for the Western District of Pennsylvania, and on January 9 filed a motion to dismiss the action on the ground that the agreement between the parties provided for disposition of the question through arbitration (75a-76a). On April 11 the Court ordered the parties "to immediately proceed to arbitration" (78a). This order included Local Union No. 1360, which represented the Ambridge employees and which had vigorously opposed the transfer of Etna employees to Ambridge (78a).

On May 18, 1961, arbitration proceedings began before Arbitrator Harry H. Platt pursuant to agreement of the defendant Armco and the plaintiffs United Steelworkers of America and its local unions Nos. 1244 and 2592 (174a-176). All parties were represented by counsel before Mr. Platt (177a) and the hearing took two days. Questions were raised as to the probable number of additional employees needed at Ambridge to operate

the enlarged facilities, and the Armco Vice-President estimated the number at 325, although he stated that to some extent this would probably be a guess (1b-5b). The estimate of 325 was based on a market forecast of the number of tons of product expected to be produced over the next five years (206a).

On June 7, 1961, Arbitrator Platt rendered his award (201a-232a). First he rejected the contention of the Etna locals that the paragraphs above referred to in the collective bargaining agreement and the seniority supplement entitled the Etna employees to the jobs at Ambridge. He held (213a-214a):

> "The above language certainly cannot be read as 'guaranteeing a right of transfer' to anyone. All it does is recognize that when new plant or department capacities are added or expanded it may be necessary or desirable to transfer employees from old plants to new plants or newly expanded departments or necessary or desirable to retransfer employees from the new to their old plants or departments or from discontinued departments or plants to new plants or departments. Should any of those events occur, the parties are agreed that problems arising out of the transfer of employees are matters which the local managements and the local grievance committees will attempt to adjust. This includes questions of whether, who, or upon what conditions employees will be transferred. The clause does not give to employees in a discontinued plant any other rights than the right to bargain for a transfer to or retransfer from a new plant or department or discontinued plant or department."

Among the documents introduced in evidence at the arbitration hearings which supported the conclusion of Mr. Platt were:

(a) the statement of Union President Philip Murray in 1945, with respect to the contractual provision relating to "the transfer of employees from discontinued departments or plants to new plants or departments", that "There is no compulsion that an agreement be reached" (12b);

(b) the statement of Mr. Murray in 1947 repeating this language (10b);

(c) the statement of Union General Counsel Arthur J. Goldberg in 1952, when the Union was requesting the Wage Stabilization Board to direct a change in this contractual language, that the old language "failed to give effect to any of the seniority rights of the employees except as those might be mutually agreed to by the parties at the local level" (15b).

And the contractual provision, so officially interpreted by the Union, remained unchanged.

Then the arbitrator considered a solution to the problem which had been worked out by a Commission of the International Executive Board of the Union. This called for awarding 206 of the estimated 325 jobs at Ambridge to the Etna employees and 119 of the jobs to Ambridge employees, and established procedures for integrating the seniority lists. This solution, Mr. Platt ruled, was the "most appropriate solution of the dispute", and "[i]n actual fact, the Etna employees are granted transfer rights and benefits which, except for the pro-

posed solution, they would not be entitled to under the existing agreement. They have no reason for complaint" (224a-225a).

The award was complied with by all parties and on September 13, 1961, the action in the District Court was dismissed with prejudice (80a). *No appeal was taken from the dismissal* (80a).

On April 23, 1962, the plaintiffs brought the present action on behalf of the class of Armco employees who were members of the same unions, Nos. 1244 and 2592 (4a). The complaint in the present action alleged that the United Steelworkers of America is the exclusive collective bargaining representative, certified by the National Labor Relations Board, for Armco's production, maintenance, and office workers at its plant in Etna (5a). The complaint alleged that Armco had closed its Etna plant and terminated all but 206 of the Etna employees, and that Armco had transferred its operations to its plant in Ambridge (13a-15a). Like the complaint in the earlier action, the complaint referred to the paragraphs in the collective bargaining agreement between the United Steelworkers of America and Armco and the seniority supplement which provided that problems arising out of the transfer of employees from discontinued plants to new plants were matters for which adjustment should be sought between local plant management and local grievence committees (11a-12a).

The complaint alleged that Armco, in breach of the paragraphs in the collective bargaining agreement and the seniority supplement, refused to transfer more than 206 of the Etna employees to Ambridge, and that all the employees had the right to be transferred to the same or

similar jobs in Ambridge (14a-16a). The complaint also alleged that Armco would require not merely the 325 employees it had estimated, but in excess of 1,000 employees, and asserted that the estimate of 325 was made by Armco to induce the United Steelworkers of America to discriminate against the Etna unions (19a-20a). The complaint asked that Armco be ordered to pay compensatory and punitive damages (17a-18a, 21a).

Armco filed a motion to dismiss the complaint, referring to the prior litigation and the arbitration proceedings (55a). The District Court granted the motion to dismiss and entered judgment for the defendant (72a-73a). The Court of Appeals for the Third Circuit affirmed per curiam (p. 60), holding that the judgment in the prior action was *res judicata* as to all issues tendered by the present action. A motion for rehearing was denied (p. 63).

ARGUMENT

I.

There is no question of federal law applicable to this case which has not been settled by this Court. It is thoroughly settled that:

(a) A question put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies.

(b) A collective bargaining representative acting in good faith has continuing authority to negotiate agreements affecting seniority.

A.

Res Judicata

The reason given by the Court of Appeals for dismissing with prejudice the claims of the petitioners was that it sought "a relitigation of the same cause of action that was before the court in the first case and was adjudicated by a decision on the merits" (p. 62). This happened in proceedings in the District Court on September 13, 1961 (80a).

As detailed in the Statement of the Case (pp. 2-3, *supra*), the first action sought to enjoin Armco from employing men at Ambridge to do work at the Ambridge plant on machinery which was to be moved from Etna. The action also sought both compensatory and punitive damages for Armco's alleged breach of its contract with the United Steelworkers of America. The present action seeks both compensatory and punitive damages for Armco's employing some men at Ambridge to do work

at the Ambridge plant on machinery that has been moved from Etna, and claims a right to damages because of Armco's alleged breach of its contract with the United Steelworkers of America.

How many times may the same party litigate the same question in the same court?

The answer is well settled: once!

The most recent authority is, we believe, *United States v. Munsingwear, Inc.*, 340 U. S. 36, 38, which reaffirmed "the classic statement of the rule of res judicata in *Southern Pacific R. Co. v. United States*, 168 U. S. 1, 48-49:

> " 'The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.' "

The question in the previous case was whether the members of the local unions at Etna had a "right" to jobs in Ambridge. The District Court ordered the question arbitrated. The arbitrator then considered the very issue involved in the present litigation (206a-207a):

> "Locals 1244 and 2592 maintain that the Inter-Plant Transfer clause of their Agreements guarantees

> Etna employees transfers to Ambridge and the right to exercise their seniority on jobs at the new combination pipe mill and on new jobs which may result from the mill operations. They believe the new mill at Ambridge will perform the same function as the Etna mill, that a substantial portion of Etna's mill equipment and facilities will be moved to Ambridge, and that the same end-product as manufactured at Etna will continue to be manufactured. Therefore, they say, the new mill jobs should go to the displaced Etna workers."

Having considered the issue, the arbitrator decided it (214a):

> "The clause [in the contract] does not give to employees in a discontinued plant any other rights than the right to bargain . . ."

And then the District Court dismissed the action with prejudice and no appeal was taken from the dismissal (80a).

So the specific issue was raised and decided. It does not matter whether the decision was right or wrong, because the Restatement of the Law of Judgment provides in § 45, comment f:

> "If the judgment is erroneous, the unsuccessful party may take steps to have it set aside or reversed in the original proceeding. If he does not do so, or if his attempt to do so is unsuccessful, he cannot thereafter collaterally attack the judgment . . . If the judgment is for the defendant, it operates as a bar to subsequent action by the plaintiff upon the original cause of action, even though the judgment is erroneous."

Argument.

Petitioners seek to escape from the rule of *res judicata* by asserting in their Questions Presented (p. 5) that the District Court in the 1961 proceeding "compelled the local unions" to submit the issue to arbitration. But the local unions were in no sense "compelled". They were ordered to arbitrate, but if they did not like the order they had the right to appeal to the Court of Appeals. Then, after the arbitration proceedings, their complaint was dismissed with prejudice, and if they did not like that order they had the right to appeal to the Court of Appeals. A party cannot simply ignore an order of a court of competent jurisdiction and, a year later, claim that it is not binding because the judgment was wrong. As this Court held in *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 415:

> "If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication."

Nor are petitioners helped by their claim that Armco misrepresented the number of jobs that would be available at Ambridge (p. 5). It is hard to conceive what motive Armco could have had, although such a misrepresentation is presumably admitted by the motion to dismiss. But the record is clear that any such misrepresentation would be irrelevant — for the reason that the arbitrator held that under the contract the Etna employees were not entitled to any of the jobs at Ambridge. So, whether they were not entitled to 325 jobs or not entitled to 1,000 jobs could make no difference.

The arbitrator considered the contract, the official records of the Steelworkers, and the testimony, including the testimony of the present petitioners Panza and Smith, who claimed that the contract guaranteed a right of transfer from one plant to another. But, in his award, the arbitrator rejected the testimony of Panza and Smith, and held that the contract "certainly cannot be read as guaranteeing a right of transfer" (213a). Then, having decided that the Etna employees had no rights whatever, the arbitrator went on to consider and approve a settlement of the dispute that had been proposed by the International Union against the protests of both the Etna and Ambridge locals. This settlement, based on the company estimate that there would be 325 jobs available, gave 206 jobs to the Etna employees. The arbitrator ruled (225a):

> "In actual fact, the Etna employees are granted transfer rights which, except for the proposed solution, they would not be entitled to under the existing agreements. They have no valid reason for complaint."

These two sentences completely destroy the petitioners' claim of fraud. In the arbitration proceedings the petitioners claimed all the jobs. The arbitrator held that the petitioners were not entitled to any, and that the settlement to which they now object gave them 206 more jobs than they had a right to receive. If a plaintiff sues to recover property and the court rules he has no rights in the property, surely he cannot escape *res judicata* by a claim that the property—to which it has been adjudicated he has no rights—was more valuable than he thought.

B.

Union Authority

The petitioners offer as one of their "Questions Presented" whether "the seniority and other vested rights of employees of one plant of an employer may be bargained away by such employer and an international union" (p. 4). Of course, the phrase "an" international union is incomplete; the petitioners concede that "the" international union, the United Steelworkers of America, had been certified as the exclusive collective bargaining representative (5a).

So the question really is whether the exclusive collective bargaining representative may "bargain away" seniority rights of some of its members and thereby improve the seniority rights of others of its members. This Court has squarely decided that it may do so, at least where the union acts in good faith—and there is nothing in the complaint (1a-54a) suggesting that the International Union acted in bad faith in agreeing to arbitration.

We think that petitioners err in their statement (pp. 40-41) that "this Court has never passed on the following questions: . . . whether such members were bound by the action of the International Union, which had been merely appointed their collective bargaining agent, in agreeing to submit to arbitration the issue of such seniority rights." We believe that this Court has held that such an agent can negotiate, bargain away, or deal in any manner with seniority rights. And to say that the Steelworkers Union was "merely" the bargaining agent is to assume

that you have to be something more than a bargaining agent in order to bargain.

In *Aeronautical Lodge v. Campbell*, 337 U. S. 521, a union member had seniority rights and then went into military service. While he was in military service the union and the employer modified the collective bargaining agreement, and this operated to the detriment of the union member on his return from military service. This Court held that the union had authority to make this agreement, stating (p. 525):

> "It is of the essence of collective bargaining that it is a continuous process. Neither the conditions to which it addresses itself nor the benefits to be secured by it remain static."

And in *Ford Motor Co. v. Huffman*, 345 U. S. 330, another union member had his seniority status adversely affected by a modification of seniority provisions while he was in military service. This Court approved, stating (pp. 338-339):

> "Inevitably differences arise in the matter and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. . . .
>
> "The National Labor Relations Act, as amended, gives a bargaining representative not only wide responsibility but authority to meet that responsibility."

But the petitioners seek to limit the authority of the exclusive collective bargaining agent, the United Steelworkers of America. They do this by referring to a provision of its constitution which says that no officer has authority to take action which constitutes a "breach" of any collective bargaining agreement (p. 16). From this they argue that the international had no authority to "modify" a collective bargaining agreement. The argument is fallacious: the authority of a union to represent employees is not a one-shot proposition which is terminated when the agreement is signed. And the same constitution recognizes that the members have delegated to the international union the power to act exclusively to represent them in *all* matters arising out of the employer-employee relationship (pp. 55-56). "All" means "all", and, contrary to the petitioners' unsupported assertion (p. 17), it does mean carte blanche authority.

II.

There is no conflict with the decisions of this Court in the American Manufacturing, Warrior, and Enterprise cases. Under a collective bargaining contract providing for arbitration, any matter, not specifically excluded, is arbitrable.

Petitioners contend that the grievance which was here arbitrated in 1961 was not arbitrable. And they say (p. 29) that the decision of the Court of Appeals, which approved the arbitration proceeding, is in conflict with decisions of this Court. We submit that the very decisions they cite show that the matter here involved was clearly arbitrable.

The most significant case is *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, where this Court held (pp. 584-585):

> "In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad."

In the present case the arbitration clause covered any unsettled "complaint" (25a), a word which could hardly be broader, and there was no exclusion clause.

United Steelworkers v. American Manufacturing Co., 363 U. S. 564, held that even seemingly frivolous claims were arbitrable. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U. S. 593, held that courts should not overrule an arbitrator because their interpretation of a contract was different from his. We are

unable to see how the holding of the Court of Appeals in the present case is in conflict with any of these decisions. And the most recent decision of this Court on the subject, *Drake Bakeries v. Local 50*, 370 U. S. 254, 259, holds that to avoid arbitration even a matter "so fundamental and so basic" as a strike in breach of contract must be "excluded from the comprehensive language . . . if the parties so intended."

Petitioners argue (p. 30) that the definition of "grievance" in the union contract is narrower than the portion quoted by the District Court. They do not dispute that the matter involved "the interpretation or application of, or compliance with, the provisions of this agreement." But they say that a "grievance", as defined in Section 6.3, is *limited* to a complaint which has not been settled as a result of the discussions required by Subsection 6.2" (p. 32). One complete answer is that the arbitration clause in the *American Manufacturing* case covered grievences "which are not adjusted as herein provided"; surely there is no difference between the *American Manufacturing* word "adjusted" and the Armco word "settled". Another complete answer is that petitioner Orest Panza, with 34 other employees, recognized the propriety of the grievance-and-arbitration procedure in this matter by filing a "grievance" on April 1, 1961, in which he made complaint of the very things here involved (60a-61a). Another complete answer is that not every "grievance" had to be discussed with a foreman under Section 6.2; grievances involving more than one department go directly to the works manager under Section 6.4133 (26a). And a final answer is that Section 6.47 provides that "Notwithstanding the procedures herein provided, any griev-

ance may be submitted to arbitration at any time by agreement of the parties to this Agreement." (31a)

The quotations given by the petitioners (pp. 34-35) from arbitration clauses in cases before this Court do not, we submit, show that the Armco contract provided for a lesser amount of arbitration. The clause in *Drake Bakeries, Inc. v. Local 50;* 370 U. S. 254, covered "complaints, disputes or grievances"; here we have a "grievance" which originates in a "complaint." We are unable to see the difference. And the petitioners say (p. 35) that "the parties cannot have intended to arbitrate so fundamental a matter." But this Court in *Drake Bakeries* held that a dispute is arbitrable no matter how "fundamental", exactly the word used by the petitioners.

Further, the petitioners are wrong when they assert (p. 37) that neither they nor the local unions agreed to or participated in the arbitration proceedings. The facts, as found by both the District Court (pp. 56-57) and the Court of Appeals (p. 61), are exactly to the contrary. The record is full of an agreement to arbitrate and a participation in the arbitration:

1. The agreement to arbitrate was executed by the International Union of Steelworkers (176a), which the petitioners allege in their complaint was the exclusive collective bargaining agent (5a). The petitioners comment (p. 40) that "it is interesting to note" that the agreement was signed for the International Union by its general counsel, Feller, Bredhoff & Anker. Such an interesting note does not negate the authority of the general counsel.

2. The agreement to arbitrate was executed by the presidents of the two local unions at Etna of which the petitioners are members (176a). The petitioners assert (p. 39) that on March 16, 1961, the local unions objected to arbitration. But on April 20, 1961, they signed the agreement (176a). The petitioners' statement (p. 40) that at a later meeting the union officers told the members "they had been forced to submit to arbitration" is not supported by anything in the record.

3. On April 1, 1961, petitioner Orest Panza, with 34 other employees, filed a grievance, complaining of the matter here involved, and closed the grievance with the words "We insist on arbitration" (60a-61a).

4. In the District Court on April 10, 1961, J. Wray Connolly, Esq., appeared and stated that he represented 256 of the same Etna employees whom the petitioners now seek to represent (144a). He told the District Court that he felt that the matter was one for arbitration (141a). The petitioners have not even attempted to repudiate the authority of Mr. Connolly.

5. The Etna local unions appeared at the arbitration proceedings on May 18, 1961, through their attorney (177a). He said that the matter was properly before the arbitrator (16b). He presented the testimony of numerous witnesses and he cross-examined opposing witnesses. And among the witnesses whose testimony the union presented were two of the present plaintiffs, Orest Panza and Frank Smith.

Aside from the general rule as to arbitrability established by the decisions of this Court, any one of these five events would have been a sufficient agreement to arbitrate. We submit that in the aggregate they are irresistible.

III.

There is no conflict with the decision of another Court of Appeals on the same matter. In the Zdanok case, the Second Circuit was concerned only with construing a particular contract, and agreed that a union can bargain away employees' seniority rights.

The petitioners ask that the writ be allowed because of a conflict with the Second Circuit in *Zdanok v. Glidden Co.*, 288 F. 2d 99, and with the Third Circuit itself in *Metal Polishers v. Viking Equipment Co.*, 278 F. 2d 142. Of course a conflict between the Third Circuit and the Third Circuit itself, if such existed, would not be grounds for allowance of the writ under Supreme Court Rule 19.1(b).

It is to be noted that petitioners assert that the Sixth Circuit ruled against them in *Oddie v. Ross Gear & Tool Co.*, 305 F. 2d 143. Oddie petitioned for a writ of certiorari, asserting a conflict with *Zdanok* and *Metal Polishers*. The writ was denied: 371 U. S. 941. There is no conflict, for two reasons.

First, as to a right of transfer:

Zdanok did not hold that under every collective bargaining contract the employees of a closed plant have the right to transfer to another plant. It held that there was such a right as a "rational construction of the contract" involved in the particular case: 288 F. 2d at 104.

Metal Polishers did not hold that there is always a right of transfer. It held there was a right in the particular case because it disagreed "with the district

judge in his interpretation of the contract": 278 F. 2d at 143.

Oddie did not hold that there is never a right of transfer. It held that the *Zdanok* agreement was "materially different from the agreement in the present case" and that the *Metal Polishers* dispute arose out of a "collective bargaining agreement which, of course, is vitally different from the situation which we are considering": 305 F. 2d at 149.

And the Court of Appeals in the present case did not hold that there is never a right of transfer. It noted that the arbitrator in the first proceeding had rejected the claim that the employer had violated the collective bargaining agreement, and that then the district court had dismissed the action with prejudice. It held that the interest of the petitioners was concluded by the dismissal of the first action with prejudice (p. 62). As to whether there would have been a right of transfer had it not been for *res judicata*, the Court of Appeals both held and said nothing at all.

Secondly, as to the right of a union to bargain away employees' seniority rights:

Petitioners say (p. 28) that *Zdanok* held that "an employer cannot unilaterally terminate the rights of employees." But the respondent here did not act unilaterally; it participated in arbitration proceedings with the exclusive collective bargaining agent. Though the petitioners argue that the bargaining agent had no power to bargain (p. 24), their reliance on *Zdanok* fails because the Second Circuit ruled (288 F. 2d at 103

> "Of course the employee owning the right, or his authorized union agent, could bargain away the employee's right."

To the same effect is the holding of the Sixth Circuit in *Oddie v. Ross Gear & Tool Co.*, 305 F. 2d 143, cert. den. 371 U. S. 941, where the Court recognized a general principle that employees have a right of transfer but denied it in the particular case because (p. 149):

> "It appears to be well settled that such rights of the individual employees can be bargained away by the Union representing them in collective bargaining. Elder v. New York Central R. Co., 152 F. 2d 361, C.A. 6th; System Federation No. 59, etc. v. Louisiana & A. Ry. Co., 119 F. 2d 509, 515, C. A. 5th. It was so recognized in Zdanok v. Glidden Co., supra, 288 F. 2d 99, 103, C. A. 2nd."

Zdanok, therefore, presents no conflict with the decision of the Court of Appeals for the Third Circuit in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID B. BUERGER
JOHN G. BUCHANAN, JR.
LOUIS EMANUEL

Attorneys for Respondent